

REMARKS**Claim Amendment**

Claims 25, 44, 48 and 50 have been amended to replace the term “obtainable” with the term “prepared”.

Claim 39 has been amended to replace the term “substance capable of forming free radicals” with the term “free radical initiator.” Support for this amendment is found on page 32, lines 3-9 of the English translation of the specification as filed.

New Claim 51 has been added. Support for new Claim 51 is found in previously presented Claim 35 and on page 9, lines 36-38 of the English translation of the specification as filed. No new matter has been added.

Claim Rejections Under 35 U.S.C. §112***Enablement***

The Examiner rejected Claims 25, 45, 48, and 50 under 35 U.S.C. §112 as not enabled. It is Applicants understanding that the Examiner takes the position that it is not clear how to obtain polymerization of vinyl-containing sulfonic acid in step (d), because step (b) of Claims 25, 44, 48 and 50 depletes vinyl-containing sulfonic acid available for polymerization. If Applicants’ understanding is incorrect, clarification is requested.

Applicants note that the Examiner’s argument assumes that vinyl-containing sulfonic acid monomer components of the mixture prepared in step (a) of Claims 25, 44, 48 and 50 are polymerized in carrying out step (b) of these claims. Applicants respectfully submit that this assumption is clearly erroneous in view of the specification.

The invention defined in Claims 25, 44, 48 and 50 includes *two polymerization steps*: polymerization of the aromatic or heteroaromatic compounds into polyazole polymers (step (b)) and *subsequent* polymerization of vinyl compounds in step (d). These two polymerizations are initiated by different means. For example, page 26, lines 22-23 of the English translation of the specification as filed explains that the purpose of step (b) is to react the carboxylic acid groups with the amino groups, ***which releases water***. As such, this polymerization is a dehydration reaction. In contrast, the polymerization of the vinyl compounds is typically initiated by ***free***

radical means. Support for this assertion is provided on page 31, lines 10-15, which states that [t]he polymerization of the vinyl-containing sulfonic acid and, where present, vinyl phosphonic acid in step D) takes place preferably by free radical means. Thus, it should be clear that the polymerization in step b) does not involve reaction of vinyl-containing sulfonic acid. Reconsideration and withdrawal of the rejection are respectfully requested.

Indefiniteness

The Examiner rejected Claims 25, 45, 48, and 50 under 35 U.S.C. §112 as indefinite. The Examiner requested correction of a term “obtainable.” The Examiner further rejected Claim 39 due to recitation of the term “substance.”

Applicants amended Claims 25, 45, 48, and 50 to replace the term “obtainable” with the term “prepared” and Claim 39 to replace the term “substance capable of forming free radicals” with the term “free radical initiator.” Applicants believe that these amendments address the Examiner’s objections.

Claim Rejections Under 35 U.S.C. §102(e)

The Examiner rejected Claims 25-50 under 35 U.S.C. §102(e) or 35 U.S.C. §103(a) over DE 101 33 739.8 and based the rejection on the context of US2004/0186189 (“Muller”), which is equivalent to DE 101 33 739.8.

US2004/0186189 is the U.S. National Stage of PCT/EP02/07734, now published as WO 03/007411. A copy of WO 03/007411 is provided herewith with the enclosed IDS. It is noted that WO 03/007411 is published in German. WO 03/007411 claims priority to DE 101 33 738.8, which is unpublished. No application or patent in the family of which US2004/0186189 is a member was published before 2003. Support for this assertion is provided by the Inpadoc patent family search for US2004/0186189, enclosed herewith as Exhibit A.

The Examiner is respectfully referred to Example 5 in MPEP 706.02(f)(1) (page 700-34), which explains the prior art effect of an International Application **not published in English** and the prior art effect of its subsequent published U.S. National Stage Application. As can be seen, an International Application **not published in English** and its subsequent published U.S. National Stage Application **cannot be applied as prior art under 35 U.S.C. 102(e)**.

An International Application not published in English *can* be applied as prior art under 35 U.S.C. §§ 102(a) and 102(b) as of their publication dates. However, WO 03/007411 was published on January 23, 2003, which is after the earliest priority date of the instant application (August 2, 2002). That Applicants are entitled to this priority date can be ascertained by inspecting the German language priority documents DE 102 35 356.5 and DE 102 35 357.3 enclosed herewith as Exhibits B and C, respectively. Direct comparison shows that many of the instant claims, including Claims 1- 10, 17 and 18, can be found in Exhibits B and C.

Thus, WO 03/007411 and US2004/0186189 are not prior art to the subject application. Withdrawal of the rejection is requested.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry of the IDS is respectfully requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By Alexander Akhiezer
Alexander Akhiezer
Registration No. 54,617
Telephone: (978) 341-0036
Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 5/16/06